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Report of the Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte

Addendum

Mission to Austria*

Summary

In the present report, the Independent Expert on the enjoyment of all human rights by older persons presents the findings of her visit to Austria from 22 to 30 January 2015. The main objective of the visit was to identify both best practices and gaps in the implementation of laws relating to the promotion and protection of the rights of older persons. She also assesses the implementation of existing international instruments, as well as laws and policies pertaining to the enjoyment of all human rights by older persons in Austria. Based on information gathered before, during and after the visit, the Independent Expert analyses the challenges faced in the realization of all human rights by older persons, paying particular attention to ostracized persons and groups of persons. She also examines measures to foster the implementation of standing law and policies that contribute to the promotion and protection of the rights of older persons.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.

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Annex

[*English only*]

Report of the Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte, on her mission to Austria

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I. Introduction

1. Pursuant to Human Rights Council resolution 20/24, the Independent Expert on the enjoyment of all human rights by older persons conducted an official visit to Austria from 22 to 30 January 2015, at the invitation of the Government. The purpose of the visit was to identify best practices and gaps in the implementation of existing law relating to the promotion and protection of the rights of older persons in that country. During her visit, she met government representatives, non-governmental organizations and others working on issues related to older persons. The Independent Expert thanks the Government of Austria for extending this invitation to her and for its cooperation throughout the visit.

II. Background and context

2. More than 18.4 per cent of the population of Austria is currently 65 years of age or above and the age structure will continue to shift significantly towards older persons in the years to come. It is estimated that the figures will rise to almost 24 per cent of a population of slightly more than 8 million people in 2030.[1]

3. The group of older persons aged between 65 and 79 will grow drastically as the baby-boomer generation grows old and as a result of the steady increase in life expectancy. There will also be significant increases in the share of the very old, i.e. those aged 80 years and more, from around 400,000 in 2011 to almost 1 million in 2050.

4. In the independent Global AgeWatch Index,[2] Austria ranks fourteenth. This was congruent with the Independent Expert's findings during her visits. She also noted a number of positive initiatives and good practices adopted in Austria to ensure the enjoyment by older persons of all human rights. In particular, she appreciated the institutionalization of the participation of older persons in decision-making through the Senior Citizen Council and commended Austria on its adoption of the federal plan regarding older persons.

III. Administrative, legal, institutional and policy framework

5. Austria is a federal republic comprised of nine independent federal provinces (Länder) that are administered by local governments headed by a provincial Governor. The Länder enjoy certain autonomy, including constitutional authority to enact certain legislation and take administrative decisions. Nevertheless, most public affairs fall under the competence of the federal authority.

6. Austria has ratified several international treaties that are of particular importance to older persons and that include direct or indirect references to the human rights of older persons. It is party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Covenant on Civil and Political Rights and its Second Optional, the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on

[1] See the website of the Austrian statistical office: www.statistik.at.

[2] See www.helpage.org/global-agewatch/population-ageing-data/country-ageing-data/?country=Austria.

Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities. It is not, however, party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families or the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

7. The Convention on the Rights of Persons with Disabilities in particular contains a number of references to age and older persons, such as article 16 (2), on age-sensitive measures to protect against exploitation, violence and abuse; article 25 (b), on the right to health; and article 28 (2) (b), on the right to an adequate standard of living.

8. As a member of the European Union, Austria is obliged to conform to the European Union *acquis communautaire* and the standards it sets. Most notably in this regard is article 25 of the Charter of Fundamental Rights of the European Union, which calls on member States to recognize and respect the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life. In accordance with article 23 of the European Social Charter, Austria furthermore committed itself to adopting or encouraging appropriate measures to ensure social rights of older persons with regard to participation, independence and self-determination.

9. Austria has also ratified most of the Council of Europe treaties on human rights and culture. It is not, however, party to Protocol No. 12 of the European Convention on Human Rights, which includes a general prohibition on discrimination, and the European Convention on the Legal Status of Migrant Workers.

10. Austria, moreover, protects human rights, including the human rights of older persons, in its Constitution and in numerous individual laws. The European Convention on Human Rights does not only have the status of a treaty under international law, but is directly applicable to federal constitutional law and therefore part of the Austrian Constitution. Moreover, article 7, paragraph 1, of the Austrian Constitution provides that all nationals are equal before the law and that privileges based upon birth, sex, estate, class or religion are inadmissible. No one shall be discriminated against on the grounds of disability.

11. In 2012, further to section 11, paragraph 2, of the Federal Senior Citizens Act,[3] Austria adopted a federal plan ageing entitled "Ageing and Future: Federal Plan for Senior Citizens". This research-based long-term plan is a cornerstone of Austrian policy regarding older persons. It seeks to guarantee and to improve the quality of life of older persons and to ensure their active involvement and participation in all spheres of life. It contains specific recommendations in a large number of areas, including participation, the economic situation, employment, health, education, older women, generations, housing and mobility, care and nursing, social security, media, discrimination and violence, migrants, and infrastructure. Beyond the federal level, each of the provinces has developed policies, plans and programmes that deal specifically with older persons. Austria's national action plan on disability 2012–2020 also devotes a chapter to older persons with disabilities.

12. The responsibility for older persons in Austria extends across several ministries. The two main ministries dealing with issues of concern to older persons are the Ministry of Labour, Social Affairs and Consumer Protection, and the Ministry of Health. As far as legislation and its enforcement are concerned, the federal Government plays a central role; however, many competencies are delegated to the provinces or to the social security institutions.

[3] Federal Law Gazette No. 84/1998.

13. Since July 2012, the Austrian Ombudsman Board has been responsible for protecting and promoting compliance with human rights, and its monitoring activities therefore extend to ensuring the human rights of older people. It also acts as a national prevention mechanism and monitors human rights in all institutions and facilities where people with or without disabilities are in danger of being particularly vulnerable to abuse, inhumane treatment and measures that deprive them of liberty. These institutions include correctional institutions, police stations, psychiatric facilities and facilities for persons with disabilities, older persons' homes and long-term care facilities.

14. To strengthen the participation of older persons in relation to issues affecting them and to establish an institutionalized dialogue, the Federal Senior Citizens Advisory Council was created. It makes proposals for social, economic, health policy, housing policy and cultural measures in senior citizens' policy.

15. The Council is the official representation of older persons and has the same status as social partners, i.e. the statutory representative bodies of employees, business people and farmers, in all matters affecting the interests of older persons. It is an umbrella organization of Austrian associations for senior citizens and a mechanism for dialogue between political decision makers and the representatives of older persons to ensure that the concerns of older persons and the proposals on how to address them are brought to the attention of the Government through the Minister of Labour, Social Affairs and Consumer Protection. This body helps to ensure the political participation of older persons, as it provides for rights to co-determination in a number of important areas: the active design of future senior citizens' policy in Austria; the Commission of Experts on Pension Reform; the autonomous administration of the social insurance institutions; and the Advisory Council of the Federation of Austrian Social Insurance Institutions.

IV. Independent Expert's main findings

A. Discrimination

16. The Equal Treatment Act[4] and its latest amendment, which entered into force in August 2013, prohibit any direct and indirect discrimination in the workplace, including on the basis of age.

17. Protection against discrimination at the level of the Länder most importantly concerns public employment. With the exception of Lower Austria, all provinces extended the scope of anti-discrimination protection beyond the employment sphere to access to and supply of goods and services, housing, social security and benefits and health.

18. The Ombud for Equal Treatment is an independent State agency that consists of three individuals, one of whom deals specifically with discrimination on the grounds of age. Its mandate, however, is limited to the area of employment and occupation. Irrespective of a person's race, ethnic origin, religion, age and sexual orientation, the agency is responsible for counselling and supporting victims of discrimination in relation to employment. It can conduct independent enquiries and surveys, publish independent reports and make recommendations on discrimination-related issues. In practice, it mostly negotiates out-of-court settlements and has almost no role before the courts. It can also, however, initiate proceedings before the Equal Treatment Commission at the request of the person concerned.

[4] Federal Law Gazette No. 66/2004.

19. Despite the comprehensive legal framework, enforcement of anti-discrimination provisions in Austria remains deficient. One reason is that the legal framework is complex and fragmented, and that instead of a single mechanism there are a number of parallel systems at the federal level and at the level of the provinces, as well as for disability-related matters.[5] Resources of the federal equality bodies are also insufficient. Another reason is the lack of awareness among the population, including about the existence of specific legislation.

20. Discrimination in access to facilities and services in Austria remains a concern. Financial services, such as loans or mortgages, or insurance, are often not available to older people or are prohibitively expensive because of the inappropriate use of age as a criterion, including for determining risk. The Independent Expert was pleased to learn during her visit that it was planned to extend the scope of the Equal Treatment Act to include access to and supply with publicly available goods and services, including housing space.

B. Violence and abuse

21. Violence against older persons in Austria remains a taboo subject. It often happens inconspicuously and in many cases goes unnoticed although there are indications that violence occurs rather frequently in all types of settings.[6] Violence against older persons takes many different forms, including discrimination in the public sphere, linguistic discrimination, isolation, neglect and financial exploitation, psychological violence, the withholding of basic needs and physical attacks.

22. Further improvements regarding the protection of and support for victims of violence were made in 2009, with the amendment of the Protection against Violence Act. Under the Act, police can impose a two-week barring order in cases of violence, evicting the endangering person from the dwelling with immediate effect, so that the victim can stay there safely.

23. If there is a need to prolong the protective measures beyond this term, victims can apply to court for a temporary injunction under civil law against the perpetrator, which will order the perpetrator to leave the apartment and forbid the person to return to it. While the measures have been effective in cases of violence against women, they are of lesser effect in relation to violence against older persons because of the interdependence between the person in need of care and the caregiver.

24. There are no representative data concerning domestic violence against older persons for Austria, in part because criminal statistics are not disaggregated by age. Reasons for underreporting include the privacy barrier in family relationships, the lack of awareness and the fear that older persons have of reprisals by the caregivers. Moreover, collective prejudice against older people and public awareness influence the way in which abuse and violence is perceived, recognized and reported.

25. Eighty per cent of Austrian older persons are cared for at home within the family. According to a study carried out by the Ministry for Labour, Social Affairs and Consumer

[5] See, for example, Behinderteneinstellungsgesetz, BGBl Nr. 22/1970, Bundes-Behindertengleichstellungsgesetz, BGBl. Nr. 82/2005 and Bundesbehindertengesetz, BGBl Nr. 283/1990.

[6] Specific awareness-raising measures under way to establish both advisory competences within existing structures and efficient strategies of action against violence against older persons will have a medium-term effect.

Protection in 2012,[7] the persons close to older people thus constitute the greatest danger for them in relative terms. Most common forms of abuse are financial exploitation, such as the use of the pension or care allowance of the old person, followed by frequent occurrences of verbal abuse, threats and neglect.

26. Violence against older people in family settings differs from violence in institutional settings. The most common complaints in institutional settings relate to structural problems in homes for the elderly and hospitals, rather than incidents involving individual caregivers. There are also frequent complaints about incidents in public places, such as public transport, public offices and shops regarding discrimination or verbal abuse.

27. It has been estimated that one out of four older women living in private households in Austria are victims of violence and abuse, of whom 4.5 per cent are victims of frequent and multiple forms of violence.[8] In cases of emotional and sexual abuse and the violation of personal rights, the perpetrator was most frequently the partner or spouse, whereas in cases of neglect and financial abuse, it is the children or children-in-law who are most frequently involved. There are also some cases of neglect, financial abuse and the violation of rights committed by paid caregivers.[9]

28. Some of the measures that have proved effective in addressing the issue of violence against women are not suited to managing conflict constellations and violent relationships involving older women. Older women generally do not resort to the possibility of staying at a women's shelter.

C. Adequate standard of living

29. On average, older persons in Austria enjoy a relatively high living standard. According to the Global AgeWatch Index, the country ranks second in terms of providing an enabling environment for older persons.[10] In 2014, the at-risk-of-poverty rate for older persons was around 14 per cent, while the rates for those living alone were 23 per cent and for older women 16 per cent.[11]

30. Social transfers, and in particular the Austrian pension system, account for the largest part of the resources of older persons and significantly contribute to ensuring financial security of a large part of the older population. Pensions reduced the at-risk-of poverty rate to 26 per cent and other social benefits further reduced it to 14 per cent in 2012.[12] Successive pension reforms have made claims to a pension and pension levels more dependent on participation in the labour market. As career breaks, part-time work and low incomes result in lower pension benefits, it is mostly women who lack financial security in old age.

31. The housing situation and housing needs of older persons are essential aspects of active ageing and of the ability of older persons to live an autonomous life. Only about half

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[7] See www.sozialministerium.at//cms/site/attachments/3/2/0/CH2275/CMS1314805959138/praevention_und_intervention_bei_gewalt_gegen_aeltere_menschen_kompl.pdf.

[8] See www.inpea.net/images/AVOW-Austrian-Survey_2011.pdf.

[9] Ibid.

[10] See footnote 2.

[11] National report on the implementation of the Economic Commission for Europe regional implementation strategy for the Madrid International Plan of Action on Ageing 2002 (2007-2012), Austria, October 2011, available from http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_li02&lang=en.

[12] Federal Ministry of Labour, Social Affairs and Consumer Protection, *Social Protection in Austria*, Vienna, April 2014.

of Austrian older persons are homeowners and thus live rent free, which is way below the Organisation for Economic Co-operation and Development (OECD) average of 76 per cent. About 98 per cent of persons aged between 65 and 80 live in private households.

32. Austria provides a rich variety of housing options for older people, including mixed and designated communities, age-adapted homes and flat-sharing concepts. Other schemes include tax incentives and subsidies to encourage developers to build accessible and appropriate housing for older people, or senior citizen apartments, which are governed by the Austrian Tenancy Act.[13] To qualify under the scheme, apartments need to cater to the needs of older persons and provide for a basic supply of social services. Family members cannot take over the tenancy inter vivos or, upon death, which makes it attractive for limited-profit housing associations to offer such apartments to older persons. Accommodation at reduced rates, which is very common among older persons in Austria, also enables many people to enjoy adequate living standards.

33. Older persons often feel the need to change their home because it is no longer adapted to their needs (e.g. too large, not barrier-free), but face considerable obstacles, particularly financial, as new rents may be significantly higher. The Independent Expert was pleased to learn during her visit that since January 2015 a new municipal housing programme is available to older persons in Vienna, to help and financially support older persons in changing to a smaller apartment.

D. Social protection and the right to social security

34. Austria has a comprehensive system of social security and welfare schemes. Social security mostly falls within the responsibility of the central government, notably social insurance, including pension insurance and universal benefits covering the entire resident population. Local governments (i.e. provinces and municipalities) are responsible for part of health care, housing and most of the social services.

35. The system operates at two levels: the insurance-based system, which includes pensions and which covers all gainfully employed persons and, to a large extent, their dependents; and public welfare benefits that are made available by the federal, provincial and municipal authorities to citizens in need, and who are not covered by the insurance system.

36. In 2004, Austria reformed its pension system. The Act on the Harmonization of Austrian Pension Systems, which entered into force in January 2005, provides a uniform pension law for all occupational groups. In addition, there are efforts to align the pensionable age for women with that of men. Starting on 1 January 2024 it will be raised by six months per year, and harmonization will be completed by 2033. The reform also introduced a bonus/malus system for deferred and earlier retirement.

37. In spite of these measures, de facto retirement age in Austria in 2013 was 59.3 years for women compared with 59 years in 2003 and 62.9 years for men compared with 62.7 years in 2003.[14] The 2014 figures show a slightly more positive trend. Early retirement is still regarded the desirable option by a large number of older workers in Austria,[15] as well as by Austrian employers. Pensions that do not reach a minimum threshold value are increased by a compensatory supplement.

[13] Federal Law Gazette No. 520/1981.

[14] See www.sozialministerium.at/cms/site/attachments/1/6/3/CH2088/CMS1313745345149/social_protection_in_austria.pdf.

[15] Wirtschaftskammer Österreich, Erwerbstätigkeit Älterer et al. 2012/13.

38. Sustainability of pensions in Austria is monitored by the Pension Commission. The Commission was established under the General Social Insurance Act and has been submitting reports every three years since 2007 on the long-term financing prospects of the statutory pension scheme until 2050. The role of the Commission is to propose sustainable reform measures if it identifies financing problems.

39. There is also a means-tested minimum income scheme, which is a subsidiary safety net of last resort within the social security system. Such benefits for instance include housing assistance.

40. Social services include a range of services, including for the benefit of older persons, such as older persons' homes and nursing homes, day-structuring and extramural services as well as housing schemes for people with special needs. Coordination between the different providers and between the provinces in the provision of these services remains an area of concern. Whereas most cash benefits and health-care services in Austria are legal entitlements, there seems to be no such entitlement to the majority of social services, most of which fall within the competencies of the Länder.[16]

41. The quantity and quality of social services varies across regions, particularly between urban and rural areas. In terms of provision of services, some social local governments run social services themselves, while other services are outsourced to non-profit organizations, associations or private providers. The public sector plays a dominant role in the area of homes for the elderly and nursing homes.

E. Education, training and lifelong learning

42. Older persons learn differently from younger ones and have specific needs and interests. Older persons learn to do, to know, to live together and to be, with informal learning playing an important role. Austria has numerous projects in the fields of lifelong learning or education after retirement in order to provide equality of access to diverse learning offers.

43. A study commissioned by the Ministry for Social Affairs and Consumer Protection in 2007[17] showed that participation of older persons in organized forms of education and learning in Austria was relatively low. It also highlighted that education and social origin are important factors determining the participation in educational offers for older persons.

44. Ensuring access to education and training in old age requires that the living environment (*Lebenswelt*) of older persons be taken into account in the planning and design of educational officers. This does not mean, however, that educational programmes should target older persons exclusively, as this would be limiting and could lead to creating spaces of social exclusion. The Independent Expert in this regard commends Austria's approach that regular studies at universities are open to older persons, which also helps foster intergenerational learning. This offer is used up to 70 per cent by older women.

45. As specific pedagogical methods are required for teaching older persons, the Independent Expert was very pleased to learn that Austria is one of the few countries offering master's degree programmes in gerontopedagogics.

46. Continuous learning is also essential in the light of the very early de facto retirement age in Austria. Any measures taken to discourage or reduce early retirement need to be

[16] The Ministry of Health is not in a position to ascertain if the services provided are legal entitlements.

[17] See www.sozialministerium.at/cms/site2/attachments/8/5/7/CH2233/CMS1218112881779/kolland_lernbeduerfnisse_zusammenfassung[1].pdf

accompanied by measures in the area of employment, including education and training, to ensure that people can meet job requirements. It is, however, important not to overfocus on employability, as this will not meet the interest of older persons beyond gainful employment and hardly reaches educationally disadvantaged groups.

47. Education also has another dimension in terms of the situation of older persons. Better-educated persons usually have better-paid jobs, contribute more to the social welfare system as a result and will also be less likely to be at risk of poverty in old age. As poverty and social exclusion in old age are also consequences of disadvantage and discrimination suffered in the early stages of a person's life, measures must be taken long before someone turns 65, as this will, to an extent, determine the resources available in old age. For a variety of reasons, the needs for care of those persons of 70 years and older who only completed their compulsory education is twice that of those who hold a university qualification.

F. Independence and autonomy

48. Approximately 55,000 persons are estimated to have a legal guardian in Austria. Half of these are under guardianship in respect of all aspects of life.[18] The number has greatly increased in recent years and will continue to rise, given the intensity of ageing in Austria.

49. The amendment to the Legal Guardianship Law, which entered into force in 2006, was an important step towards strengthening the self-determination of older persons and persons with intellectual or psychosocial disabilities. It introduced the concept of enduring power of attorney, through which people may appoint a person of trust as their future representative when they still have the necessary legal capacity, ability to reason, to judge and to express themselves. Another element strengthening self-determination is a person's right to state their preference regarding a potential future legal guardian in a written nomination of legal guardianship.

50. In September 2013, the Committee on the Rights of Persons with Disabilities noted, however, that Austrian guardianship laws appeared to be old fashioned and out of step with the provisions of article 12 of the Convention on the Rights of Persons with Disabilities. During her visit, the Independent Expert was also informed that numerous complaints had been brought to the attention of the Austrian Ombudsman Board in this connection. The Independent Expert was pleased to learn that legal capacity and the introduction of supported autonomous decision-making for persons with intellectual or psychosocial disabilities were currently under discussion in Austria.

51. While progress has been made in recent years in the area of accessibility of buildings, transportation and information, accessibility remains poor outside urban areas. A number of cities and Länder have developed plans for improving accessibility to facilities, but there is no uniform countrywide plan to provide comprehensive barrier-free accessibility. Neither are there any mandatory provisions concerning the implementation of barrier-free access and, most importantly, the elimination of existing barriers.

52. Accessibility in rural areas is more restricted than in urban areas. Distances to facilities for everyday activities are longer, and destinations and spatial structures are often too dispersed for organizing efficient and dense public transport.

[18] See CRPD/C/AUT/CO/1, para. 27.

G. Care

53. Health care in Austria is based on a social-insurance model that guarantees all inhabitants equitable access and a legal right to health services. The principle of statutory health insurance, together with the co-insurance dependents (children and non-working partners), ensures coverage of 99.9 per cent of the population. The main legislative basis is the General Social Insurance Act.

54. Competencies in the areas of health and care are fragmented, both regarding legislation and implementation. The division of financial responsibilities among the federal authorities—the Länder, municipalities and social security agencies—does not necessarily match the general division of responsibilities for tasks and expenditure, even though the 2012 reform brought some improvement in this area.

55. The main actors in the area of health at federal level are the Ministry of Health, the Ministry of Labour, Social Affairs and Consumer Protection, the social security institutions and the social partners. The Ministry of Health prepares laws, is responsible for the protection of public health, as well as overall health policy, and functions as facilitator between the different players in the health-care system, and also as decision maker and supervisory authority. For instance, while the Government is responsible for outpatient care legislation, responsibility for inpatient care (i.e. in hospitals) is shared between the federal and the provincial level: the federal Government provides the framework legislation, while legislation on implementation and enforcement falls under the responsibility of the Länder. While recent health-care reforms[19] have contributed to alleviate some of the problems, the overall fragmentation leads to conflicts of interests, lack of transparency, overlaps and governance deficits.

1. Home and family care

56. In Austria, home care is the most common form of care for older persons; with institutional and community care services being relatively scarce. In 2007, Austria adopted the Home Care Act,[20] which provides a legal framework for 24-hour care for care-needing people in private households. This was an important improvement to formalize services mostly provided on an informal basis until then, which contravened several legal provisions, including on social security, taxes, professional qualification, and immigration. The Act allows caregivers to provide services as self-employed persons or dependent employees.

57. There are a number of services to support family carers, such as counselling and respite care. However, day centres, opportunities for short-term care and day care for older persons remain insufficient. The amendment of the Labour and Social Act in 1998 was a major step towards facilitating the inclusion of family carers into the social security system. This is particularly important given the fact that more than two thirds of caregivers are women and that 70 per cent of the carers are not gainfully employed.

58. In 2007, standards were set for caring professions providing services at home: for example, protection from signing a contract on the doorstep, and establishing minimum contents of contracts.

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[19] The Law on the Quality of Health Care Services of 2005, for instance, guarantees cross-sectoral quality. Furthermore, during the last years a quality strategy for the Austrian health-care system and a patient security strategy were developed.

[20] Federal Law Gazette No. 33/2007, last amended by No. 57/2008.

59. Ensuring quality control in home care is one of the main challenges. While home visits by certified care workers are an important step in monitoring home care, further measures are required to improve the protection of older persons, including against physical and mental violence, and from degrading treatment and neglect.

2. Institutional care

60. Institutional care in Austria has historically been at a very low level compared with other Western European welfare States. In 1996–1997, only 3.8 per cent of the population were living in homes.

61. Special civil law regulations and information obligations apply to homes for the elderly.[21] The homes are thoroughly examined and legal warnings issued in cases of non-conformity with legal requirements.

62. The Nursing Home Residence Act[22] and the Hospitalization Act[23] stipulate the requirements when depriving a person of their liberty in nursing homes, homes for the elderly, facilities for people with disabilities, hospitals and psychiatric facilities. In institutions for the elderly, deprivation of liberty of persons with disabilities or people in need of care may never be justified on organizational grounds or deficiencies (e.g. lack of staff, structural defects, or inadequate infrastructure). Deprivation of liberty by electronic or mechanic means or medication can be considered only as a last resort. Nevertheless, in September 2013, the Committee on the Rights of Persons with Disabilities expressed deep concern that the law allows for persons to be confined against their will in a psychiatric institution if they have a psychosocial disability and are considered to be a danger to themselves or to others. The Committee regarded this as being in conflict with article 14 of the Convention on the Rights of Persons with Disabilities because it allows for a person to be deprived of liberty on the basis of actual or perceived disability.

63. The conditions and terms with respect to housing in homes for the elderly are laid down, inter alia, in sections 27 (b) to (i) of the Consumer Protection Act,[24] as well as in the nursing home acts of the Länder. According to section 27 (d), paragraph 3, of the Consumer Protection Act, these contracts must contain provisions regarding patients' personal rights (e.g. right to privacy, right to respect of their correspondence, right to political and religious self-determination, freedom of expression, assembly and association, right to contact with the outside world, right to equal treatment and prohibition of discrimination, right to adequate medical treatment, and right to individual clothing).

64. An important institution is the Patients' Advocates in Austria, which offers assistance and represents patients in matters of health, hospitals and nursing homes in the Länder. In particular, the advocates act as legal representatives in court proceedings for involuntary placement and also support individuals during their stay in hospitals or psychiatric departments. While in principle their tasks end by law when the individual dies in an institution, the Austrian Supreme Court of Justice in 2010[25] held that their power of representation remains in such cases, as otherwise there would be a gap in human rights protection.

[21] Federal Law Gazette No. 140/1979, last amended by No. 12/2004.
[22] Federal Law Gazette No. 11/2004, last amended by No. 18/2010.
[23] Federal Law Gazette No. 155/1990, last amended by No. 18/2010.
[24] Federal Law Gazette No. 140/1979, last amended by No. 50/2013.
[25] Decision of the Austrian Supreme Court, No. 4 Ob 210/09z, Vienna, 23 February 2010.

3. Long-term care

65. In 1993, Austria was the first country in Europe to introduce universal coverage of a tax-financed long-term care allowance as the main instrument for funding long-term care. In 2008, 422,000 persons in Austria received the long-term care allowance. It is estimated that the figures will double by 2030, not least because of an increasingly ageing society.

66. The long-term care system combines benefits in cash and in kind, whereby cash benefits, by contrast to other European countries, form the largest part of it. The core of the system is the long-term care allowance, which is a social right in Austria. The long-term care allowance is granted regardless of the reasons of the need for care or the income or assets of the person concerned. In 2013, around 5 per cent of Austria's population received long-term care benefits. The introduction of the long-term care allowance was an important step towards enabling older persons to remain at home as long as possible and to lead independent lives.

67. Home-care services are mostly provided by non-profit organizations and include nursing care, mobile therapeutic services, meals on wheels, transport service, home cleaning, laundry services and weekend help. Institutional care services, including care in residential homes, nursing homes, day-care centres and in night-care centres, are mainly provided by the provinces and municipalities, or by religious and other non-profit organizations. About 15 per cent of the care facilities are run by private legal entities.

68. Another important element of the long-term care system is article 15 (a) of the 1993 agreement between the State and the provinces for people in need of care,[26] according to which the Länder have to develop needs and development plans for an adequate and comprehensive system of institutional, semi-institutional, and home-based care services with full geographical coverage, observing minimum standards. This includes palliative care.

69. In 2009, Austria amended the Federal Long-Term Care Act. The Act provides for partial increases[27] in the long-term care benefit, the introduction of a hardship supplement as well as for granting financial aid towards short-term care that will benefit a larger number of care-giving family members.

70. On 1 January 2012, a comprehensive reform of long-term care benefits entered into force. The reform led to the takeover of the long-term care benefits of the Länder in the legislation and execution at federal level. Before the reform, the structure of long-term care benefits was fragmented, as there existed a benefit in cash from the federal State and every province had its own cash benefit. There were different legal acts and also different actors involved, which was also criticized by the Austrian Court of Auditors.

71. In the area of cash benefits, particularly the long-term care allowance, before 2012 there was considerable fragmentation of the legal framework, together with the additional provisions at the local level regarding the classification of those in need of care, which resulted in further divergences. The aim of harmonizing the standards between the Länder was not, however, reached through the 2012 reform as far as care facilities are concerned, and diverging standards in terms of quality, quantity and types of services provided remained as a result of the lack of uniform legislation across the Länder.

72. The objective of the reform was to regroup the competencies for legislation and execution of long-term care benefits in cash under the federal Government, to reduce the number of actors involved, from around 300 to 5, and to ensure the uniform implementation

[26] Federal Law Gazette No. 80/2004.

[27] As of 1 January 2016, the long-term care allowance will be increased by 2 per cent at each level.

of long-term care benefits in cash, to reduce costs related to that and to shorten the duration of the proceedings of allocation of long-term care benefits in cash.

73. In spite of the long-term care allowance, there are no comprehensive safeguards against the financial risks in the event of care. There are no legal provisions regarding the percentage of the resulting additional expense that should be covered by the allowance, and, in fact, the real expenses are not even ascertained.

74. The beneficiary who receives long-term care benefit in cash can arrange their care and nursing for themselves, or chose to reside in a residential home. In this case, most of the long-term care allowances and pension, if any, are used to bear the costs of residential care and are directly paid to the provincial, municipal or social-assistance authority concerned. The Länder have various recourse mechanisms against the person in need of care, which differ according to the province. If the person in need of care used all of their capital, the social welfare agency will bear the cost of residential care. In July 2014, Styria was the last of Austria's provinces to abolish recourse against children for the costs of care for their parent.

75. In May 2011, the Government decided to establish a long-term care fund to support the provinces and the municipalities in covering care-related expenditure. A uniform definition of care-giving and nursing services in the long-term-care system was also enshrined in the law, and a countrywide database on care services was created.

4. Palliative care

76. Austria started developing its palliative care capability in the mid-1990s, with the opening of several hospices and the recognition of isolated initiatives by the medical community and governmental authorities. In 2001, Parliament decided to initiate the structured development of hospice and palliative care. There is no right to palliative care in Austria.[28]

77. Austria provides a variety of palliative care services, including palliative care units and mobile palliative care teams, as well as hospices for long-term care. While palliative care is not recognized as a medical speciality in Austria, the Independent Expert was pleased to learn that, further to her visit, a new regulation on the education of doctors was adopted, which makes palliative care and subject-specific palliative medicine a compulsory and integral part of the general and special medical training.[29]

78. The practice of inappropriate medication and drug prescription is a major risk factor for geriatric patients and is associated with adverse outcomes such as hospitalization and death. A study conducted in 2012 indicated that more than half of persons aged 70 and above were prescribed at least one potentially inappropriate medication.[30]

5. Geriatric services

79. In 2000, the Austrian Federal Institute for Health Care developed a plan for a network of geriatric acute care and remobilization units, which was adopted by the

[28] Legal health insurance provides for medical treatment if an irregular physical or mental state requires such treatment. In this regard, it is irrelevant whether the medical service is provided at home or in a care institution. The term "medical treatment" also includes treatment solely for pain relief, as well as for the prevention of deterioration of the state of health.

[29] See Ärztinnen-/Ärzte-Ausbildungsordnung 2015.

[30] E. Mann et al., "Potentially inappropriate medication in older persons in Austria: a nationwide prevalence study in 2012", in *European Geriatric Medicine*, vol. 5, issue 6, December 2014, pp. 399-405.

Government and the Länder. The Structural Plan for Health defines the framework conditions, necessary capacities and official quality standards for geriatric acute care and remobilization units in hospitals. It was agreed that by 2030 each larger general hospital in Austria should provide a department for geriatric medicine. In 2012, around 1,300 doctors with evidence of knowledge and experience in geriatric medicine were registered as geriatricians.

80. With the adoption in July 2015 of the new regulation on the education of doctors, following the Independent Expert's visit, geriatric medicine or subject-specific geriatric medicine has become a mandatory subject in the curriculum for the education of both general practitioners and specialists.[31]

6. Quality of care and availability of services

81. There is no comprehensive quality assurance or control of care in Austria, although some provisions are contained in the law on hospitals and convalescent homes..[32]

82. Since 2001, home visits have been conducted by professional care personnel for the purpose of quality assurance of home care. The objective of the visits is to provide information and advice to caregivers and persons in need of care regarding the purpose of long-term care benefits. It is also to check whether the care provided is adapted to the needs of the person concerned. The situation of home care is evaluated on the basis of a standardized report. Between 2001 and 2014, more than 158,000 home visits were made by professional nursing staff. Home visits also provide more general information about the care situation in Austria and are an important source of data.

83. Homes for older persons and nursing homes that go beyond meeting legal requirements and take targeted measures to improve the quality of life of the residents may be awarded the National Quality Certificate for Homes for the Elderly and Nursing Homes. The certificates were developed by the Government and the Länder, in cooperation with experts, and are awarded on the basis of a uniform sector-specific assessment procedure performed by objective third parties.

84. In 2009, certificates were granted to 14 homes for the elderly and nursing homes. In 2010, the certification procedure was revised and its scope widened to include geriatric centres following the pilot phase. Standards for hospice and palliative care were also incorporated.

85. Quality assurance in inpatient, semi-institutional and outpatient care, as well as home care, remains insufficient.[33] There is also no monitoring of the utilization of the long-term care allowance. Only in cases of neglect of a patient are cash benefits to be replaced by benefits in kind.

86. The benefits in kind very considerably from one province to another. They relate to the availability of services, such as places in homes for the elderly, the services themselves, including room size or staffing levels, and the costs and prices. Differences exist even within the provinces themselves, as there is no guarantee that the same services are available everywhere at the same cost and the same quality. As a result of the piecemeal

[31] Particular emphasis has been placed on "subject-specific geriatric treatment" in the special subject of "internal medicine".

[32] See H. Janig et al., "Versorgung optimieren, vermeidbare Krankenhaustransporte reduzieren. Eine Interventionsstudie in Kärntner Pflegeheimen", in G. Pinter et al., *Geriatrische Notfallversorgung*, Vienna, 2013.

[33] According to the Government, there are broad, partly extensive provisions on quality for hospitals and practitioners (who also conduct home visits).

structure of service providers, there are coordination problems that lead to inefficient resource utilization.

7. Care workers

87. Care work is often characterized by an increasing workload, long working hours and emotional exhaustion, and care workers tend to be undervalued, underpaid and undertrained. Yet there is evidence that the wellbeing of care workers correlates with the satisfaction of persons in need of care.

88. In the years to come, Austria will face serious challenges in terms of the availability of qualified nursing staff. There are currently around 100,000 care workers in Austria, many of whom will retire in the next 10 to 15 years. In addition, it is estimated that in the light of the intensity of ageing, another 30,000 care workers will be needed by the year 2030. The care sector is also losing staff owing to the lack of opportunities for workers to progress to higher levels. The average time a care worker carries out their profession is seven years. There is also an increasing need for academically trained care personnel that are sufficiently specialized to fulfil complex tasks.

89. The Independent Expert was concerned that the lack of qualified care workers has led to disturbing practices in some institutional care facilities, in violation of the human rights of residents, including older persons. These practices include beginning the night rest at 4.30 p.m. and waking up patients as early as 3.30 a.m. for them to be washed, or residents not being able to go outdoors because no staff were available to accompany them. Overmedication of persons suffering from dementia has also been reported.

8. Older migrants and care

90. The number of older migrants in need of care is expected to increase substantially in the coming years, given the current age profile of this segment of the Austrian population. In many instances, older migrants' needs of social and health-care services are not only determined by age, but also by their migration biography, such as low-paid work and hazardous working environments.

91. They are often disadvantaged in terms of old-age pension as a result of their lower incomes during their working life; in terms of housing, as they are more likely to live in low-standard accommodation and have limited access to housing benefits.

92. The predominance of family care in Austria is also problematic with respect to older migrants many of whom have no family and thus have only fragile support networks. Besides exclusion in legal terms, the main barriers to the use of social services by older migrants are the non-availability of specific services in their mother tongue and a lack of information.

V. Conclusions and recommendations

93. **Austria has a long tradition of policies and a strong legal framework aimed at promoting and protecting the rights of older persons and has consistently demonstrated its commitment in this regard at the international level. This commitment was reiterated in meetings at the highest level during the mission. The Independent Expert notes that Austria seems to be well prepared to respond to the challenges of its demographic revolution.**

94. **The Independent Expert commends Austria on adopting the Federal Plan for Senior Citizens and encourages it to continue mainstreaming the rights of older persons in all policies and programmes, which should actively combat ageism, and the**

marginalization and social exclusion of older persons and reduce their vulnerability, including to abuse and violence.

95. The Independent Expert further commends the Government on the number of studies that are regularly commissioned by the authorities to assess the situation and needs of older people in the country and to inform policymaking. She welcomes the broad array of topics covered, such as the social situation of older persons, the prevalence of abuse and violence against older women and the specific needs of older migrants. She also welcomes the fact that many of the studies are carried out in collaboration with academia and research centres. She regards this as a good example of how research can feed into targeted and successful policy-planning, design and implementation.

96. The Independent Expert encourages the Government to continue its efforts to ensure that social protection systems, health care, housing policies and anti-discrimination legislation take the specific needs of older persons fully into consideration.

97. The Independent Expert recommends that Austria ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, as well as all conventions of the International Labour Organization, including the Nursing Personnel Convention, 1977 (No. 149), the Vocational Rehabilitation and Employment Convention, 1983 (No. 159) and the Domestic Workers Convention, 2011 (No. 189). As Austria is a member of the Council of Europe, the Independent Expert encourages the Government to ratify Protocol No. 12 to the European Convention on Human Rights, which provides for a general prohibition of discrimination.

98. On the basis of these conclusions and the observations in the present report, the Independent Expert makes the recommendations set out below.

A. Discrimination

99. The Independent Expert recognizes the progress made in developing anti-discrimination laws at the federal and regional levels, but notes that the legal and institutional framework against discrimination is complex and fragmented and that the enforcement of anti-discrimination provisions remains deficient. She encourages the Government to review the institutions engaged in the implementation of anti-discrimination and equality legislation with a view to further harmonizing and streamlining the structures of the equality bodies.

100. Noting that the office of the Ombud for Equal Treatment irrespective of race, ethnic origin, religion, age and sexual orientation in relation to employment is understaffed, she urges the Government to provide adequate resources to the equality bodies to ensure that they can make full use of their powers, such as by conducting independent enquiries and surveys and publishing independent reports.

101. The Independent Expert notes that monitoring of age- related discrimination is limited to employment issues and that discrimination in other areas, such as in access to facilities and services in Austria, remains of concern. Financial services, such as loans or mortgages, or commercial insurance, are often not available to older people or are prohibitively expensive because of the inappropriate use of age as a criterion, including for determining risk. The Independent Expert stresses that the same level of protection should be accorded across the different grounds of discrimination as a matter of priority and welcomes the plans to extend the scope of the Equal Treatment Act to include access to and supply of publicly available goods and services, including housing space.

102. She further encourages the Government to review the remedies available to ensure that they trigger a change in the behaviour of people who discriminate against older persons, such as injunctive powers, and to ensure that they can deal effectively with cases of multiple discrimination.

103. The Independent Expert notes the lack of awareness among the population, including about the existence of specific legislation and that relevant domestic law. Legislation has to be made easy for the public to understand, and a nationwide awareness-raising campaign should be organized to educate older persons, in particular marginalized older persons, about their rights and the remedies available to enable them to pursue legal action and exercise their rights.

104. In view of the difficulties faced by older persons in accessing financial and commercial insurance services and resources, the Independent Expert wishes to remind businesses of their obligations to adhere to international standards preventing, inter alia, all forms of discrimination and to the Guiding Principles on Business and Human Rights, which provide guidance on responsible contracting and State-investor contract negotiations. The Independent Expert also wishes to remind the Government of its primary obligation to respect, protect and fulfil human rights in the context of corporate activities undertaken by State-owned or private enterprises,[34] and the need to adopt appropriate laws and regulations, together with monitoring, investigation and accountability procedures to set and enforce standards for the performance of corporations.

B. Violence and abuse

105. The Independent Expert notes that no data are available on the prevalence of violence against older persons and reminds the Government of the need to collect disaggregated relevant statistical data at regular intervals on cases of all forms of violence and abuse against older persons as well as other impediments to the enjoyment of all human rights by older persons, such as, for example, all forms of discrimination on the basis of age alone. The Independent Expert recognizes that data have to be used sensibly to avoid stigmatization and potential misuse, and that particular care should be exercised when collecting and analysing data in order to respect and enforce data protection and the right to privacy.

106. The Independent Expert stresses the need to systematically include older persons in surveys and official statistics, including the very old and those living in institutions such as nursing homes, to allow, among other things, a better disaggregation by age and to better reflect the enormous heterogeneity of older persons.

107. The Independent Expert notes that collective prejudice against older people and public awareness influence the way in which abuse and violence is perceived, recognized and reported. She recognizes the efforts being made by Austria to raise awareness in society of the issue of violence against older people, such as the publications that the Federal Ministry for Labour, Social Affairs and Consumer Protection produced on the issue of recognition of violence, on dementia and violence, or on the provision of consulting services regarding abuse of older persons.

[34] See the report of the Committee on Economic, Social and Cultural Rights for the obligations of States parties regarding the corporate sector and economic, social and cultural rights (E/2012/22, annex VI, sect. A).

108. The estimated prevalence rate and the fact of underreporting indicate that further awareness-raising is necessary to increase the prevention, disclosure and detection of abuse and violence against older people. Information about remedies, referral pathways and available services should be made widely available. This would include not only within the target group itself, but also in the broader public domain, and particularly the social environment of older persons, such as family, friends and caregivers as well as target employees in homes and institutions, doctors, nurses and carers and the general public. Dissemination of information to older persons about their rights could help to further improve disclosure about abusive experiences. Caregivers and law enforcement personnel should receive targeted training to recognize and handle cases of abuse and violence against older persons.

109. The Independent Expert notes that intervention strategies such as the Protection against Violence Act, which is very effective in the case of violence against women, has little effect in relation to violence against older people and that new legal solutions should be considered to address this phenomenon.

110. Given the multidimensionality of abuse of and violence against older persons, there is a need for a comprehensive, integrated and inclusive approach, involving different disciplines, organizations and actors, as well as older persons themselves, in identifying appropriate responses to abuse and violence.

C. Adequate standard of living

111. The Independent Expert encourages the Government to take further measures to reduce poverty among older persons, including older women and older migrants.

112. The Independent Expert stresses that the promotion of lifelong learning is essential for older persons if they are to be able to deal with constantly changing circumstances, requirements and challenges, for their active participation in society and for an independent life continuing into old age.

113. The Independent Expert appreciates the variety of housing options available for older persons in Austria, including mixed and designated communities, age-adapted homes and flat-sharing concepts. She also welcomes the tax incentives and subsidies to encourage developers to build accessible and appropriate housing for older people. She stresses, however, the need to further promote alternative forms of housing to ensure that older persons can remain in their homes and fully enjoy their right to adequate housing, and the need to increase the residential mobility of older persons.

114. Engineers' and architects' awareness of the implications of their profession on the enjoyment of all human rights by older persons is essential. The Independent Expert recommends fostering the application of a human rights-based approach to secure the human rights conform involvement of architect and engineers in the design of public and private buildings.

D. Social protection, and education, training and lifelong learning

115. Continued learning is also essential in the light of Austria's very early de facto retirement age. Measures to discourage or reduce early retirement need to be accompanied by measures in the area of employment, including education and training, to ensure that people are able to meet job requirements. To encourage older persons to remain longer in the labour market also requires working places to be

adapted to the needs of older workers. The Independent Experts notes the incentives created, such as through the Employment Initiative up to 2017, to encourage businesses to prolong the active employment of older persons, but stresses that further measures are needed to reduce the gap between the actual retirement age and the statutory pensionable age in Austria.

E. Independence and autonomy

116. While the amendment of the Legal Guardianship Law in 2006 was an improvement of the previous system of legal incapacitation, the Independent Expert stresses that the main emphasis should be on ensuring that older persons can lead a self-determined and autonomous life as long as possible. She encourages the Government to pursue its efforts to introduce supported autonomous decision-making for persons with intellectual or psychosocial disabilities, including older persons. Supported decision-making is essential for the respect of the autonomy of older persons and their individual rights, in their own capacity, to give and withdraw informed consent for medical treatment, to access justice, to vote, to marry, to work and to choose their place of residence. The Independent Expert welcomes the launch of the model pilot project on supported decision-making, under the National Disability Action Plan.

117. Given that physical ability, individual characteristics and the transport environment crucially influence the mobility of older persons, the Independent Expert encourages the authorities to take further measures to improve the mobility of older persons in rural areas, such as through providing better access to public transport.

118. There is no uniform, countrywide concept for providing comprehensive barrier-free accessibility. Public and private suppliers do not show sufficient consideration for the demographic developments and inevitability of mobility becoming limited in old age. There is a lack of uniform and obligatory provisions demanding the implementation of barrier-free access and, equally important, the elimination of existing barriers.

F. Care

119. The Independent Expert welcomes the human-rights based approach to long-term care, and the introduction of the long-term care allowance as a social right in Austria and encourages the Government to extend this approach to other sectors of care.

120. The Independent Expert recognizes the advantages of a federal structure, notably to ensure that policies, measures and services targeting older persons reflect the needs and the situation of the local population. She notes, however, that in some areas, such as health and care, this has led to fragmentation of the legal framework and to diverging standards both in terms of the services provided and their quality. The Independent Expert recommends that the Government review the current regulation of the care sector to ensure that the system is able to meet the challenges associated with demographic change.

121. The Independent Expert recommends that Austria enshrine the right to extensive information on public support services and different means of nursing and care in its legislative framework, as well as the right to choose among different adequate housing and care options.

122. The fact that health is subject to federal regulation, whereas social care falls within the competencies of the Länder, makes coordination of these two areas difficult and constitutes a barrier to integrating health and social care.

123. The Independent Expert calls upon the Government to review the Nursing Home Residence Act and the Hospitalization Act to ensure that no older person be deprived of their liberty against their will on the basis of actual or perceived disability.

124. Measures need to be taken to eliminate the differences in the accessibility of long-term care benefits, both in cash and in kind, and to equalize access of older persons. The differences among and within regions should also be eliminated. The Independent Expert reiterates that human rights obligations pertain to all levels of government, and calls on the Government to ensure that all people in Austria, including older persons, are able to enjoy their rights on an equal basis.

125. The Independent Expert emphasizes that, in view of their particular vulnerability, specific attention has to be paid to older persons in need of care, both in institutions and at home, and adequate numbers of skilled staff, appropriate training, quality assurance and monitoring ensured.

126. The Independent Expert urges the Government to enshrine the right to palliative care in the legal framework to ensure that older persons can enjoy the last years of life in dignity and without unnecessary suffering. She also stresses the need to better integrate geriatric and palliative care.

127. The Independent Expert notes with concern the high prevalence of potentially inappropriate medication, which is associated with adverse outcomes such as hospitalization and death. A countrywide strategy on potentially inappropriate medication is required to guarantee the right to health of older persons in Austria.

128. Older persons have different patterns of disease presentation than younger adults, they respond to treatments and therapies in different ways, and they frequently have complex social needs that are related to their chronic medical conditions. While the Independent Expert recognizes that Austria is one of the few countries where geriatric medicine is integrated in university curricula, there is a need to further promote this discipline to ensure that enough qualified geriatrics are available to meet the needs of an ageing society.

129. The Independent Experts stresses that quality care also depends on the working conditions of the care workers, as their well-being correlates with the satisfaction of the persons in need. In order to ensure that care workers provide care that meets the emotional and physical needs of older persons with compassion and dignity and to retain and attract people into the care sector, better training opportunities, including academic qualifications, should be provided, which will also help portray care work as a profession with good career prospects.

130. The Independent Expert appreciates the efforts being made by Austria to study the specific needs and preferences of older migrants in order to enable them to make use of services that are acceptable to them. She notes, however, that concrete policies targeting the older migrant population are needed as a matter of priority. Further measures are required including to improve the legal position of older migrants so as to ensure equal access to social care and services and to ensure adequate and accessible information about the services available. There is also a need to further develop social and support networks for older migrants within their communities, including migrant organizations and self-help groups.